KA / BG-GPO/2515/WPP-47/2009-2011



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೪೪	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಏಪ್ರಿಲ್ ೯, ೨೦೦೯ (ಚೈತ್ರ ೧೯, ಶಕ ವರ್ಷ ೧೯೩೧)	ಸಂಚಿಕೆ ೧೫

ಭಾಗ–೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು.

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 12 ಕೇಶಾಪ್ರ 2009, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 9ನೇ ಫೆಬ್ರವರಿ 2009

2009ನೇ ಸಾಲಿನ ಜನವರಿ 9ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ–II ಸೆಕ್ಷನ್ 1ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ The Gramnyayalayas Act, 2008 (Act No. 4 of 2009) ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 9th January, 2009/Pausa 19, 1930 (Saka)

The following Act of Parliament received the assent of the President on the 7th January, 2009 and is hereby published for general information:

THE GRAMNYAYALAYAS ACT, 2008
NO. 4 OF 2009

[7th January 2009]

An Act to provide for the establishment of Gram Nyayalaya at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected there with or incidental thereto.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:

CHAPTER I
Preliminary

1. **Short title extent and commencement**: (1) This Act may be called the Gram Nyayalaya Act, 2008.

(2) It extends to the whole of India except the State of Jammu and Kashmir, the State of Nagaland, the State of Arunachal Pradesh, the State of Sikkim and to the tribal areas.

Explanation : In this sub-section, the expression "tribal areas" means the areas specified in Parts, I, II, IIA and III of the Table below paragraph 20 of the Sixth Schedule to the Constitution within the State of Assam, the State of Meghalaya, the State of Tripura and the State of Mizoram, respectively.

(3) It shall into force on such date as the Central Government may, by notification published in the Official Gazette, appoint; and different dates may be appointed for different States.

2. Definitions : In this Act, unless the context otherwise requires,-

(a) "Gram Nyayalaya" means a court established under sub-section (1) of section 3;

(b) "Gram panchayat" means an institution (by whatever name called) of self-government constituted, at the village level, under article 243B of the Constitution, for the rule areas;

(c) "High Court" means-

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;

(iii) in relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India;

(d) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(e) "Nyayadhikari" means the presiding officer of a Gram Nyayalaya appointed under section 5;

(f) "Panchayat at intermediate level" means an institution (by whatever name called) of self-government constituted, at the intermediate level, under article 243 B of the Constitution ,for the rural areas in accordance with the provisions of Part IX of the Constitution;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "Schedule" means the Schedule appended to this Act"

(i) "State Government" in relation to a Union territory, means the administrator thereof appointed under article 239 of the Constitution;

(j) words and expressions used herein and not defined but defined in the Code of Civil Procedure, 1908 (5 of 1908) or the Code of Criminal Procedure, 1973 (2 of 1974) shall have the meanings respectively assigned to them in those Codes.

CHAPTER II
GRAM NYAYALAYA

3. Establishment of Gram Nyayalayas: (1) For the purpose of exercising the jurisdiction and powers conferred on a Gram Nyayalaya by this Act, the state Government, after consultation with the High Court, may, by notification, establish one or more Gram Nyayalayas for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Gram Panchayats.

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Gram Nyayalaya shall extend and may, at any time, increase, reduce or alter such limits.

(3) The Gram Nyayalayas established under sub-section (1) shall be in additional to the courts established under any other law for the time being in force.

4. Headquarters of Gram Nyayalaya : The headquarters of every Gram Nyayalaya shall be located at the headquarters of the intermediate Panchayat in which the Gram Nyayalaya is established or such other place as may be notified by the State Government.

5. Appointment of Nyayadhikari : The State Government shall, in consultation with the High Court, appoint a Nyayadhikari for every Gram Nyayalaya.

6. Qualifications for appointment of Nyayadhikari : (1) A person shall not be qualified to be appointed as a Nyayadhikari unless he is eligible to be appointed as a Judicial Magistrate of the first class.

(2) While appointing a Nyayadhikari, representation shall be given to the members of the Scheduled Castes, the Scheduled Tribes, women and such other classes or communities as may be specified by notification, by the State Government from time to time.

7. Salary allowances and other terms and conditions of service of Nayadhikari : The salary and other allowances payable to, and the other terms and conditions of service of, a Nyayadhikari shall be such as may be applicable to the Judicial Magistrate of the first class.

8. Nyayadhikari not to preside over proceedings in which he is interested: The Nyayadhikari shall not preside over the proceedings of a Gram Nyayalaya in which he has any interest or is otherwise involved in the subject matter of the dispute or is related to any party to such proceedings and in such a case, the Nyayadhikari shall refer the matter to the District Court or the Court of Session, as the case may be, for transferring it to any other Nyayadhikari.

9. Nyayadhikari to hold mobile courts and conduct proceedings in villages : (1) The Nyayadhikari shall periodically visit the villages falling under his jurisdiction and conduct trial or proceedings at any place which he considers is in close proximity to the place where the parties ordinarily reside or where the whole or part of the cause of action had arisen:

Provided that where the Gram Nyayalaya decides to hold mobile court outside its headquarters, it shall give wide publicity as to the date and place where it proposes to hold mobile court.

(2) The State Government shall extend all facilities to the Gram Nyayalaya including the provision of vehicles for holding mobile court by the Nyayadhikari while conducting trial or proceedings outside its headquarters.

10. Seal of Gram Nyayalaya : Every Gram Nyayalaya established under this Act shall use a seal of the court in such form and dimensions as may be prescribed by the High Court with the approval of the State Government.

CHAPTER III

JURISDICTION, POWERS AND AUTHORITY OF GRAM NYAYALAYA

11. Jurisdiction of Gram Nyayalaya : Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, the Gram Nyayalaya shall exercise both civil and criminal jurisdiction in the manner and to the extent provided under this Act.

12. Criminal Jurisdiction : (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, the Gram Nyayalaya may take cognizance of an offence on a complaint or on a police report and shall.

(a) try all offences specified in Part I of the First Schedule; and

(b) try all offences and grant relief, if any, specified under the enactments included in Part II of that Schedule.

(2) Without prejudice to the provisions of sub-section (1), the Gram Nyayalaya shall also try all such offences or grant such relief under the State Acts which may be notified by the State Government under sub-section (3) of section 14.

13. Civil jurisdiction : (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, and subject to sub-section (2), the Gram Nyayalaya shall have jurisdiction to-

(a) try all suits or proceedings of a civil nature falling under the classes of disputes specified in Part I of the Second Schedule;

(b) try all classes of claims and disputes which may be notified by the Central Government under sub-section (1) of section 14 and by the State Government under sub-section (3) of the said section.

(2) The pecuniary limits of the Gram Nyayalaya shall be such as may be specified by the High Court, in consultation with the State Government, by notification, from time to time

14. Power to amend Schedules : (1) Where the Central Government is satisfied that it is necessary or expedient so to do, it may by notification, add to or omit any item in Part I or Part II of the First Schedule or Part II of the Second Schedule, as the case may be, and it shall be deemed to have been amended accordingly.

(2) Every notification issued under sub-section (1) shall be laid before each House of Parliament

(3) If the State Government is satisfied that it is necessary or expedient so to do, it may, in consultation with the High Court, by notification, add to any item in Part III of the First Schedule or Part III of the Second Schedule or omit from it any item in respect of which the State Legislature is competent to make laws and thereupon the First Schedule or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

(4) Every notification issued under sub-section (3) shall be laid before the State Legislature.

15. Limitation :(1) The provisions of the Limitation Act, 1963 (36 of 1963) shall be applicable to the suits triable by the Gram Nyayalaya.

(2) The provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974) shall be applicable in respect of the offences triable by the Gram Nyayalaya.

16. Transfer of pending proceedings : (1) The District Court or the Court of Session, as the case may be, with effect from such date as may be notified by the High Court, May transfer all the civil or criminal cases, pending before the courts subordinate to it, to the Gram Nyayalaya competent to try or dispose of such cases.

(2) The Gram Nyayalaya may, in his discretion, either retry the cases or proceed from the stage at which it was transferred to it.

17. Duties of ministerial officers : (1) The State Government shall determine the nature and categories of the officers and other employees required to assist a Gram Nyayalaya in the discharge of its functions and provide the Gram Nyayalaya with such officers and other employees as it may think fit.

(2) The salaries and allowances payable to and other conditions of service of, the officers and other employees of the Gram Nyayalaya shall be such as may be prescribed by the State Government.

(3) The officers and other employees of a Gram Nyayalaya shall perform such duties as may, from time to time, be assigned to them by the Nyayadhikari.

CHAPTER IV

PROCEDURE IN CRIMINAL CASES

18. Overriding effect of Act in criminal trial : The provisions of this Act shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any, other law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Gram Nyayalaya; and for the purpose of the said provisions of the Code, the Gram Nyayalaya shall be deemed to be a Court of Judicial Magistrate of the first class.

19. Gram Nyayalaya to follow summary trial procedure : (1) Notwithstanding anything contained in sub-section (1) of section 260 or sub-section (2) of section 262 of the Code of Criminal Procedure, 1973 (2 of 1974), the Gram Nyayalaya shall try the offences in a summary way in accordance with the procedure specified in Chapter XXI of the said Code and the provisions of sub-section (1) of section 262 and sections 263 to 265 of the said Code, shall, so far as may be, apply to such trial.

(2) When, in the course of a summary trial, it appears to the Nyayadhikari that the nature of the case is such that it is undersirable to try it summarily, the Nyayadhikari shall recall any witness who may

have been examined and proceed to re-hear the case in the manner provided under the code of Criminal Procedure, 1973, (2 of 1974).

20. Plea bargaining before Gram Nyayalaya : A person accused of an offence may file an application for plea bargaining in Gram Nyayalaya in which such offence is pending trial and the Gram Nyayalaya shall dispose of the case in accordance with the provisions of Chapter XXIA of the Code of Criminal procedure, 1973 (2 of 1974).

21. Conduct of cases in Gram Nyayalaya and legal aid to parties : (1) For the purpose of conducting criminal cases in the Gram Nyayalaya on behalf of the Government, the provisions of section 25 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply.

(2) Notwithstanding anything contained in sub-section (1), in a criminal proceeding before the Gram Nyayalaya, the complainant may engage an advocate of his choice at his expense to present the case of prosecution with the leave of the Gram Nyayalaya.

(3) The State Legal services Authority, constituted under section 6 of the Legal Services Authorities Act, 1987 (39 of 1987) shall prepare a panel of advocates and assign at least two of them to be attached to each Gram Nyayalaya so that their services may be provided by the Gram Nyayalaya to the accused unable to engage an advocate.

22. Pronouncement of judgment : (1) The judgment in every trial shall be pronounced by the Nyayadhikari in open court immediately after the termination of the trial or at any subsequent time, not exceeding fifteen days, of which notice shall be given to the parties.

(2) The Gram Nyayalaya shall deliver a copy of its judgement immediately to both the parties free of cost.

CHAPTER V
PROCEDURE IN CIVIL CASES

23. Overriding effect of Act in Civil proceedings : The Provisions of this Act shall have effect notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Gram Nyayalaya; and for the purpose of the said provisions of the Code, the Gram Nyayalaya shall be deemed to be a civil court.

24. Special procedure in civil disputes: (1) Notwithstanding anything contained in any other law for the time being in force, every suit claim or dispute under this Act shall be instituted by making an application to the Gram Nyayalaya in such form, in such manner, and accompanied by such fee, not exceeding rupees one hundred, as may be prescribed by the High Court, from time to time in consultation with the state Government.

(2) Where a suit, claim or dispute has been duly instituted, a summons shall be issued by the Gram Nyayalaya, accompanied by a copy of the application made under sub-section (1), to the opposite party to appear and answer the claim by such date as may be specified therein and the same shall be served in such manner as may be prescribed by the High Court.

(3) After the opposite party files his written statement, the Gram Nyayalaya shall fix a date for hearing and inform all the parties to be present in person or through their advocates.

(4) On the date fixed for hearing the Gram Nyayalaya shall hear both the parties in regard to their respective contentions and where the dispute does not require recording of any evidence, pronounce the judgement; and in case where it requires recording of evidence, the Gram Nyayalaya shall proceed further.

(5) The Gram Nyayalaya shall also have the power,-

(a) to dismiss any case for default or to proceed ex parte; and

(b) to set aside any such order of dismissal for default or any order passed by it for hearing the case ex parte.

(6) In regard to any incidental matter that may arise during the course of the proceedings, the Gram Nyayalaya shall adopt such procedure as it may deem just and reasonable in the interest of justice.

(7) The proceedings shall, as far as practicable, be consistent with the interests of justice and the hearing shall be continued on a day-to day basis until its conclusion, unless the Gram Nyayalaya finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded in writing.

(8) The Gram Nyayalaya shall dispose of the application made under sub-section (1) within a period of six months from the date of its institution.

(9) The judgement in every suit, claim or dispute shall be pronounced in open court by the Gram Nyayalaya immediately after conclusion of hearing or at any subsequent time, not exceeding fifteen days, of which notice shall be given to the parties.

(10) The judgement shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

(11) A copy of the judgement shall be delivered free of cost to both the parties within three days from the date of pronouncement of the judgement.

25. Execution of decrees and orders of Gram Nyayalaya : (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, (5 of 1908) the judgement passed by a Gram Nyayalaya shall be deemed to be a decree and it shall be executed by a Gram Nyayalaya as a decree of the civil court and for this purpose, the Gram Nyayalaya shall have all the powers of a civil court.

(2) The Gram Nyayalaya shall not be bound by the procedure in respect of execution of a decree as provided in the Code of Civil Procedure, 1908 (5 of 1908) and it shall be guided by the principles of natural justice.

(3) A decree may be executed either by the Gram Nyayalaya which passed it or by the other Gram Nyayalaya to which it is sent for execution.

26. Duty of Gram Nyayalaya to make efforts for conciliation and settlement of civil disputes :(1) In every suit or proceeding, endeavour shall be made by the Gram Nyayalaya in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist, persuade and conciliate the parties in arriving at a settlement in respect of the subject matter of the suit, claim or dispute and for this purpose, a Gram Nyayalaya shall follow such procedure as may be prescribed by the High Court.

(2) Where in any suit or proceeding, it appears to the Gram Nyayalaya at any stage that there is a reasonable possibility of a settlement between the parties, the Gram Nyayalaya may adjourn the proceeding for such period as it thinks fit to enable them to make attempts to effect such a settlement.

(3) Where any proceeding is adjourned under sub-section (2), the Gram Nyayalaya may, in its discretion, refer the matter to one or more Conciliators for effecting a settlement between the parties.

(4) The power conferred by sub-section (2) shall be in addition to, and not in derogation of any, other power of the Gram Nyayalaya to adjourn the proceeding.

27. Appointment of Conciliators : (1) For the purposes of section 26, the District Court, shall, in consultation with the District Magistrate, prepare a panel consisting of the names of social workers at the village level having integrity for appointment as Conciliators who possess such qualifications and experience as may be prescribed by the High Court.

(2) The sitting fee and other allowances payable to and the other terms and conditions for engagement of Conciliators shall be such as may be prescribed by the State Government.

28. Transfer of civil disputes : The District Court having jurisdiction may, on an application made by any party or when there is considerable pendency of cases in one Gram Nyayalaya or whenever it considers necessary in the interests of justice, transfer any case pending before a Gram Nyayalaya to any other Gram Nyayalaya within its jurisdiction.

CHAPTER VI
PROCEDURE GENERALLY

29. Proceedings to be in the official language of the State: The proceedings before the Gram Nyayalaya and its Judgment shall, as far as practicable, be in one of the official languages of the State other than the English language.

30. Application of Indian Evidence Act 1872 : A Gram Nyayalaya may receive as evidence any report, statement, document, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).

31. Record of oral evidence : In suits or proceedings before a Gram Nyayalaya, it shall not be necessary to record the evidence of witnesses at length, but the Nyayadhikari, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of substance of what the witness deposes, and such memorandum shall be signed by the witness and the Nyayadhikari and it shall form part of the record.

32. Evidence of formal character on affidavit : (1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Gram Nyayalaya.

(2) The Gram Nyayalaya may, if it thinks fit, and shall on the application of any of the parties to the suit or proceeding, summon and examine any such person as to the facts contained in his affidavit.

CHAPTER VII
APPEALS

33. Appeal in criminal cases : (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law, no appeal shall lie from any judgment, sentence or order of a Gram Nyayalaya except as provided hereunder.

(2) No appeal shall lie where-

(a) an accused person has pleaded guilty and has been convicted on such plea;

(b) the Gram Nyayalaya has passed only a sentence of fine not exceeding one thousand rupees.

(3) Subject to sub-section (2), an appeal shall lie from any other judgment, sentence or order of a Gram Nyayalaya to the Court of Session.

(4) Every appeal under this section shall be preferred within a period of thirty days from the date of judgement, sentence or order of a Gram Nyayalaya;

Provided that the Court of session may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(5) An appeal preferred under sub-section (3) shall be heard and disposed of by the Court of Session within six months from the date of filing of such appeal.

(6) The Court of Session may, pending disposal of the appeal, direct the suspension of the sentence or order appealed against.

(7) The decision of the Court of Session under sub-section (5) shall be final and no appeal or revision shall lie from the decision of the Court of Session;

Provided that nothing in this sub-section shall preclude any person from availing of the judicial remedies available under articles 32 and 226 of the Constitution.

34. Appeal in civil cases : (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law, and subject to sub-section (2) an appeal shall lie from every judgment or order, not being an interlocutory order, of a Gram Nyayalaya to the District Court.

(2) No appeal shall lie from any judgment or order passed by the Gram Nyayalaya

(a) with the consent of the parties;

(b) where the amount or value of the subject matter of a suit, claim or dispute does not exceed rupees one thousand;

(c) except on a question of law, where the amount or value of the subject matter of such suit, claim or dispute does not exceed rupees five thousand.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Gram Nyayalaya.

Provided that the District Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(4) An appeal preferred under sub-section (1) shall be heard and disposed of by the District Court within six months from the date of filing of the appeal.

(5) The District Court may, pending disposal of the appeal, stay execution of the judgment or order appealed against.

(6) The decision of the District Court under sub-section (4) shall be final and no appeal or revision shall lie from the decision of the District Court:

Provided that nothing in this sub-section shall preclude any person from availing of the judicial remedies available under articles 32 and 226 of the Constitution.

CHAPTER VIII
MISCELLANEOUS

35. Assistance of police to Gram Nyayalayas: (1) Every police officer functioning within the local limits of jurisdiction of a Gram Nyayalaya shall be bound to assist the Gram Nyayalaya in the exercise of its lawful authority.

(2) Whenever the Gram Nyayalaya, in the discharge of its functions, directs a revenue officer or police officer or Government servant to provide assistance to the Gram Nyayalaya, he shall be bound to provide such assistance.

36. Nyayadhikaris and employees etc., to be public servants : The Nyayadhikaris and the officers and other employees of the Gram Nyayalayas shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 (45 of 1860) of the Indian Penal Code.

37. Inspection of Gram Nyayalayas: The High Court may authorise any judicial officer superior in rank to the Nyayadhikri to inspect the Gram Nyayalayas within his jurisdiction once in every six months or such other period as the High Court may prescribe and issue such instructions as he considers necessary and submit a report to the High Court.

38. Power to remove difficulties : (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

39. Power of High Court to make rules : (1) The High Court may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the form and dimensions of the seal of the Gram Nyayalaya under section 10;

(b) the form, the manner and the fee for institution of suit, claim or proceeding under sub-section (1) of section 24;

(c) manner of service on opposite party under sub-section (2) of section 24;

(d) procedure for conciliation under sub-section (1) of section 26;

(e) qualifications and experience of Conciliators under sub-section (1) of section 27;

(f) the period for inspection of Gram Nyayalayas under section 37.

(3) Every notification issued by the High Court shall be published in the Official Gazette.

40. Power of State Government to make rules : (1) The State Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the salaries and allowances payable, to and the other terms and conditions of service of the officers and other employees of the Gram Nyayalayas under sub-section (2) of section 17;

(b) the sitting fee and other allowances payable to and the other terms and conditions for engagement of, Conciliators under sub-section (2) of section 27.

(3) Every rule made by the State Government under this Act shall be laid as soon as may be after it is made, before the state Legislature.

THE FIRST SCHEDULE

(See sections 12 and 14)

PART I

OFFENCES UNDER THE INDIAN PENAL CODE (45 OF 1860) ETC.

(i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed rupees twenty thousand;

(iii) receiving or retaining stolen property under section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed rupees twenty thousand;

(iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860), where the value of such property does not exceed rupees twenty thousand;

(v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);

(vi) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, punishable with imprisonment for a term which may extend to two years, or with fine, or with both, under section 506 of the Indian Penal Code (45 of 1860);

(vii) abetment of any of the foregoing offences;

(viii) an attempt to commit any of the foregoing offences, when such attempt is an offence.

PART II

OFFENCES AND RELIEF UNDER THE OTHER CENTRAL ACTS

(i) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871);

(ii) the payment of Wages Act, 1936 (4 of 1936);

(iii) the Minimum Wages Act, 1948 (11 of 1948);

(iv) the Protection of Civil Rights Act, 1955 (22 of 1955);

(v) order for maintenance of wives, children and parents under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(vi) the Bonded Labour System (Abolition)Act, 1976 (19 of 1976);

(vii) the Equal Remuneration Act, 1976 (25 of 1976);

(viii) the Protection of Women from Domestic Violence Act, 2005 (43 of 2005)

PART III

OFFENCES AND RELIEF UNDER THE STATE ACTS

(To be notified by the State Government)

THE SECOND SCHEDULE

(See sections 13 and 14)

PART I

SUITS OF A CIVIL NATURE WITHIN THE JURISDICTION OF GRAM NYAYALAYAS

(i) Civil Disputes;

(a) right to purchase of property;

(b) use of common pasture;

(c) regulation and timing of taking water from irrigation channel.

(ii) Property Disputes:

(a) village and farm houses (Possession);

(b) water channels;

(c) right to draw water from a well or tube well

(iii) Other Disputes :

(a) claims under the Payment of Wages Act, 1936 (4 of 1936);

(b) claims under the Minimum Wages Act, 1948 (11 of 1948);

(c) money suits either arising from trade transaction or money lending;

(d) disputes arising out of the partnership in cultivation of land;

(e) disputes as to the use of forest produce by inhabitants of Gram Panchayats.

PART II

CLAIMS AND DISPUTES UNDER THE CENTRAL ACTS NOTIFIED UNDER SUB-SECTION (1) OF SECTION 14 BY THE CENTRAL GOVERNMENT

(To be notified by the Central Government)

PART III

CLAIMS AND DISPUTES UNDER THE STATE ACTS NOTIFIED UNDER SUB-SECTION (3) OF SECTION 14 BY THE STATE GOVERNMENT

(To be notified by the State Government)

T.K. VISWANATHAN

Secy. To the Govt. of India

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,

ಆರ್. ಆಂಜಿನಿ

ಪಿ.ಆರ್. 16

ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ,
ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 9 ಕೇಶಾಪ್ರ 2009, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 3ನೇ ಫೆಬ್ರವರಿ 2009

2008ನೇ ಸಾಲಿನ ಡಿಸೆಂಬರ್ 5ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ–II ಸೆಕ್ಷನ್ 1ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ The Drugs and Cosmetics (Amendment) ACT, 2008 (Act No.26 of 2008) ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 5th December, 2008/Agrahayana 14, 1930 (Saka)

The following Act of Parliament received the assent of the President on the 5th December, 2008 and is hereby published for general information:

THE DRUGS AND COSMETICS (AMENDMENT)ACT, 2008
NO. 26 OF 2008

[5th December 2008]

An Act further to amend the Drugs and Cosmetics Act, 1940.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows.

1. Short title and commencement : (1) This Act may be called the Drugs and Cosmetics (Amendment) Act, 2008.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Insertion of new section 17E: After section 17D of the Drugs and Cosmetics Act, 1940(23 of 1940) (hereinafter referred to as the principal Act), the following section shall be inserted, namely:

"17E. Adulterated cosmetics For the purposes of this Chapter, a cosmetic shall be deemed to be adulterated,-

(a) if it consists in whole or in part, of any filthy, putrid or decomposed substance:or

(b) if it has been prepared packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health ;or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;or

(d) if it bears or contains , for purposes of colouring only, a colour other than one which is prescribed;or

(e) if it contains any harmful or toxic substance which may render it injurious to health;or

(f) if any substance has been mixed therewith so as to reduce its quality or strength".

3. Amendment of section 18 : In section 18 of the principal Act, in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely,-

"(ii) any cosmetic which is not of a standard quality, or is misbranded, adulterated or spurious;"

4. Amendment of section 26A : In section 26A of the principal Act, for the word "prohibit", the words "regulate, restrict or prohibit" shall be substituted.

5. Insertion of new section 26B : After section 26A of the principal Act, the following section shall be inserted, namely-

"26 B. Power of Central Government to regulate or restrict, Manufacture, etc., of drug in public interest : Without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied that a drug is essential to meet the requirements of an emergency arising due to epidemic or natural calamities and that in the public interest, it is necessary or expedient so to do, then, that Government may, by notification in the Official Gazette, regulate or restrict the manufacture, sale or distribution of such drug".

6. Amendment of section 27 : In section 27 of the principal Act-,

(i) in clause (a)-

(A) for the figures letter and words "17B or which", the figures letter and words "17B and which" shall be substituted.

(B) for the words "punishable with imprisonment for a term which shall not be less than five years but which may extend to a term of life and with fine which shall not be less than ten thousand rupees", the words "punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall

also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, which ever is more", shall be substituted.

(c) the following provisos shall be inserted, namely:

"Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or spurious drugs referred to in this clause:

Provided further that where the use of the adulterated or spurious drugs referred to in this clause has caused the death of a person who used such, drugs the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.

Explanation : For the purposes of the second proviso, the expression "relative" means-

(i) spouse of the deceased person;or

(ii) a minor legitimate son, and unmarried legitimate daughter and a widowed mother; or

(iii) parent of the minor victim;or

(vi) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or

(v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death,-

(a) the parent ;or

(b) a minor brother or an unmarried sister;or

(c) a widowed daughter-in-law;or

(d) a widowed sister;or

(e) a minor child of a pre-deceased son;or

(f) a minor child of a pre-deceased daughter where no parent of the child is alive;or

(g) the paternal grandparent if no parent of the member is alive;"

(ii) in clause(b),-

(A) for the words "not be less than one year but which may extend to three years and with fine which shall not be less than five thousand rupees" the words "not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(B) in the proviso, for the words "less than one year and of fine of less than five thousand rupees" the words "less than three years and of fine of less than one lakh rupees" shall be substituted;

(iii) in clause (c),-

(A) for the words "not be less than three years but which may extend to five years and with fine which shall not be less than five thousand rupees" the words "not less than seven years but which may extend to imprisonment for life and with fine which shall not be three lakh rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(B) in the proviso, for the words "less than three years but not less than one year" the words "less than seven years but not less than three years and of fine of less than one lakh rupees" shall be substituted;

(iv) in clause (d), for the words "and with fine" the words "and with fine which shall not be less than twenty thousand rupees" shall be substituted.

7. Amendment of section 27A : In section 27A of the principal Act, for clauses (i) and (ii), the following clauses shall be substituted, namely-

(i) any cosmetic deemed to be spurious under section 17D or adulterated under section 17E shall be punishable with imprisonment for a term which may extend to three years and with fine which

shall not be less than fifty thousand rupees or three times the value of the cosmetics confiscated, whichever is more;

(ii) any cosmetic other than a cosmetic referred to in clause (i) in contravention of any provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees, or with both".

8. Amendment of section 28 : In section 28 of the principal Act, for the words "with fine which may extend to one thousand rupees or with both" the words "with fine which shall not be less than twenty thousand rupees or with both" shall be substituted.

9. Amendment of section 28A : In section 28A of the principal Act, for the words "with fine which may extend to one thousand rupees or with both", the words "with fine which shall not be less than twenty thousand rupees or with both" shall be substituted.

10. Amendment of section 29 : In section 29 of the principal Act, for the words "five hundred rupees" the words "five thousand rupees" shall be substituted.

11. Amendment of section 30 : In section 30 of the principal Act,-

(a) in sub-section (1),-

(1) in clause (a),-

(A) for the words "not be less than two years but which may extend to six years and with fine which shall not be less than ten thousand rupees" the words "not be less than seven years but which may extend to ten years and with fine which shall not be less than two lakh rupees" shall be substituted.

(b) in the proviso, for the words "less than two years and of fine of less than ten thousand rupees" the words "less than seven years and of fine of less than one lakh rupees" shall be substituted;

(ii) in clause (b), for the words "shall not be less than six years but which may extend to ten years and with fine which shall not be less than ten thousand rupees", the words "shall not be less than ten years but which may extend to imprisonment for life and with fine which shall not be less than three lakh rupees" shall be substituted;

(iii) in clause (c), for the words "five thousand rupees", the words "fifty thousand rupees" shall be substituted;

(b) in sub-section (2), for the words "ten years, or with fine, or with both", the words "two years, or with fine which shall not be less than ten thousand rupees or with both" shall be substituted.

12. Amendment of section 32 : In section 32 of the principal Act, for sub-sections (1) and (2) , the following sub-sections shall be substituted, namely:

"(1) No prosecution under this Chapter shall be instituted except by-

(a) an Inspector;or

(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government ;or

(c) the person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter;"

13. Insertion of new section 32B : After section 32A of the principal Act, the following section shall be inserted, namely:

"32B. Compounding of certain offences: (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974)any offence punishable under clause (b) of sub-section (1) of section 13, section 28 and section 28A of this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the Central Government or by any State Government or any officer authorised in this behalf by the Central Government or a State Government, on payment for credit to that Government of such sum as that Government may, by rules made in this behalf, specify:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded:

Provided further that in cases of subsequent offences, the same shall not be compoundable.

(2) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the court to which he is committed or, as the case may be, before which the appeal is to be heard.

(3) Where an offence is compounded under sub-section (1) no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith",

14. Amendment of section 33 : In section 33 of the principal Act, in sub-section (2)-,

(i) after clause (dd), the following clause shall be inserted, namely-

"(dda) prescribe under clause (d) of section 17E the colour or colours which a cosmetic may bear or contain for the purposes of colouring;"

(ii) in clause (p), the word "and" occurring at the end shall be omitted;

(iii) in clause (q), the word "and" shall be inserted at the end;

(iv) after clause (q), the following clause shall be inserted, namely:

"(r) sum which may be specified by the Central Government under section 32B."

15. Amendment of section 33-I : In section 33-I of the principal Act-

(a) in sub-section (1),-

(i) for clause (a), the following clause shall be substituted, namely:

"(a) any Ayurvedic, Siddha or Unani drug-

(i) deemed to be misbranded under section 33E,

(ii) deemed to be adulterated under section 33EE, or

(iii) without a valid licence or in violation of any of the conditions thereof, as required under section 33EEC,

shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than twenty thousand rupees or three times the value of the drugs confiscated, whichever is more",

(ii) in clause (b), for the words "five thousand rupees" occurring at both the places, the words "fifty thousand rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(iii) after clause (b), the following clause shall be inserted, namely:

"(c) any Ayurvedic, Siddha or Unani drug in contravention of the provisions of any notification issued under section 33EED shall be punishable with impresonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees or three times the value of the drugs confiscated, whichever is more",

(b) in sub section (2), for the words "three months and with fine which shall not be less than five hundred rupees" the words "six months and with fine which shall not be less than ten thousand rupees" shall be substituted.

16. Amendment of section 33J : In section 33J of the principal Act,-

(a) in clause (a), for the words "two thousand rupees", the words "fifty thousand rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(b) in clause (b), for the words "five thousand rupees" occurring at both the places, the words "one lakh rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted;

(c) in clause (c), for the words "six months and with fine which shall not be less than one thousand rupees" the words "one year and with fine which shall not be less than twenty thousand rupees or three times the value of the drugs confiscated, whichever is more" shall be substituted.

17. Insertion of new sections 33KA and 33KB : After section 33K of the principal Act, the following sections shall be inserted, namely-,

"33KA. Disclosure of name of manufacturer, etc: Every person, not being the manufacture of any Ayurvedic, Siddha or Unani drug or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the Ayurvedic, Siddha or Unani drug.

33KB. Maintenance of records and furnishing of information : Every person holding a licence under clause (c) of section 33EEC shall keep and maintain such records, registers and other documents as may be prescribed and shall furnish to any officer or authority exercising any power or discharging any function under this Act such information as is required by such officer or authority for carrying out the purposes of this Act".

18. Amendment of section 33N : In section 33N of the principal Act, in sub-section (2),-

(i) in clause (gga), the word "and" occurring at the end shall be omitted;

(ii) after clause (gga), the following clause shall be inserted, namely,-

"(ggb) prescribe the records, registers or other documents to be kept and maintained under section 33KB; and",

19. Amendment of section 36A: In section 36A of the principal Act, for the words"all offences under this Act", the words, brackets, figures and letters "all offences (except the offences triable by the Special Court under section 36AB or Court of Session) under this Act" shall be substituted.

20. Insertion of new sections 36AB, 36AC, 36AD and 36AE : After section 36A of the principal Act, the following sections shall be inserted, namely,-

'36AB. Special Courts : (1) The Central Government, or the State Government, in consultation with the Chief Justice of the High Court, shall, for trial of offences relating to adulterated drugs or spurious drugs and punishable under clauses (a) and (b) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and clause (b) of sub-section (1) of section 30 and other offences relating to adulterated drugs or spurious drugs, by notification, designate one or more Courts of Session as a Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation: In this sub-section, "High Court" means the High Court of the State in which a Court of Session designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, (2 of 1974) be charged at the same trial.

36AC. Offences to be cognizable and non-bailable in certain cases: (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,- (2 of 1974).

(a) every offence, relating to adulterated or spurious drug and punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be cognizable.

(b) no person accused, of an offence punishable under clauses (a) and (c) of sub-section (1) of section 13, clause (a) of sub-section (2) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and sub-sections (1) and (2) of section 30 and other offences relating to adulterated drugs or spurious drugs, shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Courts so directs.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 36AB.

36.AD. Application of Code of Criminal Procedure 1973 to proceedings before Special Court : (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973(2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting the prosecution before the special Court, shall be deemed to be a Public Prosecutor:

Provided that the Central Government or the State Government may also appoint, for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Creminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly.

36AE. Appeal and revision : The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court'.

T.K. VISWANATHAN,
Secy to the Govt. of India

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,
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